

## CHAPTER 823

## NUISANCES

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**823.01 Jurisdiction over nuisances.** Any person, county, city, village or town may maintain an action to recover damages or to abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same.

**History:** 1973 c. 189; Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.01.

Town's recovery under nuisance statute does not require injury to town's own property. *Town of East Troy v. Soo Line R. Co.* 653 F (2d) 1123 (1980).

**823.02 Injunction against public nuisance, time extension.** An action to enjoin a public nuisance may be commenced and prosecuted in the name of the state, either by the attorney general on information obtained by the department of justice, or upon the relation of a private individual, sewerage commission created under ss. 66.20 to 66.26 or a county, having first obtained leave therefor from the court. An action to enjoin a public nuisance may be commenced and prosecuted by a city, village, town or a metropolitan sewerage district created under ss. 66.88 to 66.918 in the name of the municipality or metropolitan sewerage district, and it is not necessary to obtain leave from the court to commence or prosecute the action. The same rule as to liability for costs shall govern as in other actions brought by the state. No stay of any order or judgment enjoining or abating, in any action under this section, may be had unless the appeal is taken within 5 days after notice of entry of the judgment or order or service of the injunction. Upon appeal and stay, the return to the court of appeals or supreme court shall be made immediately.

**History:** 1971 c. 276; Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.02; 1977 c. 187, 379; 1981 c. 282.

The state can apply for an injunction against a retailer whose revolving charge plan is usurious, even though the statute violated does not provide for a criminal penalty. *State v. J. C. Penney Co.* 48 W (2d) 125, 179 NW (2d) 641.

This section was not repealed by implication by the creation of former ss. 144.30 through 144.46 which empowers the department of natural resources to investigate sources of pollution. *State v. Dairyland Power Coop.* 52 W (2d) 45, 187 NW (2d) 878.

A court of equity will not enjoin a crime or ordinance violation to enforce the law, but will if the violation constitutes a nuisance. Repeated violations of an ordinance constitute a public nuisance as a matter of law, and the injunction can only enjoin operations which constitute violations of the ordinance. *State v. H. Samuels Co.* 60 W (2d) 631, 211 NW (2d) 417.

The concept that an owner of real property can, in all cases, do as he pleases with his property is no longer in harmony with the realities of society. The supreme court herein adopts the "reasonable use" rule codified in the second Restatement of the Law of Torts. *State v. Deetz*, 66 W (2d) 1, 224 NW (2d) 407.

Nuisance is unreasonable activity or use of property that interferes substantially with comfortable enjoyment of life, health, safety of another or others. *State v. Quality Egg Farm, Inc.* 104 W (2d) 506, 311 NW (2d) 650 (1981).

The social and economic roots of judge-made air pollution policy in Wisconsin. *Laitos*, 58 MLR 465.

Primary jurisdiction; role of courts and administrative agencies. *Krings*, 1972 WLR 934.

Protecting the right to farm: Statutory limits on nuisance actions against the farmer. *Grossman and Fischer*. 1983 WLR 95.

**823.03 Judgment.** In such actions, when the plaintiff prevails, the plaintiff shall, in addition to judgment for damages and

costs, also have judgment that the nuisance be abated unless the court shall otherwise order.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.03; 1993 a. 486.

**823.04 Execution and warrant.** In case of judgment that the nuisance be abated and removed the plaintiff shall have execution in the common form for the plaintiff's damages and costs and a separate warrant to the proper officer requiring the officer to abate and remove the nuisance at the expense of the defendant.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.04; 1993 a. 486.

**823.05 Warrant may be stayed.** The court may, on the application of the defendant, order a stay of such warrant for such time as may be necessary, not exceeding 6 months, to give the defendant an opportunity to remove the nuisance, upon the defendant's giving satisfactory security to do so within the time specified in the order.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1982); Stats. 1975 s. 823.05; 1993 a. 486.

**823.06 Expense of abating, how collected.** The expense of abating such nuisance pursuant to such warrant shall be collected by the officer in the same manner as damages and costs are collected upon execution or may be collected by finding the defendant personally liable for these expenses, as provided in s. 74.53. The officer may sell any material of any fences, buildings or other things abated or removed as a nuisance as personal property is sold upon execution and apply the proceeds to pay the expenses of such abatement, paying the residue, if any, to the defendant.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.06; 1983 a. 476; 1987 a. 378.

**823.065 Repeated violations of a municipal ordinance a public nuisance.** Repeated or continuous violation of a municipal ordinance relating to naphtha, benzol, gasoline, kerosene or any other inflammable liquid or combustible material is declared a public nuisance, and an action may be maintained by the municipality to abate such nuisance and enjoin such violation.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.065; 1993 a. 246.

**823.07 Violations of ordinances or resolutions relating to noxious business.** Repeated or continuous violations of a city, village or town resolution or ordinance enacted pursuant to s. 66.052 (1) is declared a public nuisance and an action may be maintained by any such municipality to abate or remove such nuisance and enjoin such violation.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.07.

**823.08 Actions against agricultural uses. (1) LEGISLATIVE PURPOSE.** The legislature finds that development in rural

areas and changes in agricultural technology, practices and scale of operation have increasingly tended to create conflicts between agricultural and other uses of land. The legislature believes that, to the extent possible consistent with good public policy, the law should not hamper agricultural production or the use of modern agricultural technology. The legislature therefore deems it in the best interest of the state to establish limits on the remedies available in those conflicts which reach the judicial system. The legislature further asserts its belief that local units of government, through the exercise of their zoning power, can best prevent such conflicts from arising in the future, and the legislature urges local units of government to use their zoning power accordingly.

(2) DEFINITIONS. In this section:

(a) “Agricultural practice” means any activity associated with an agricultural use.

(b) “Agricultural use” has the meaning given in s. 91.01 (1).

(3) NUISANCE ACTIONS. (a) An agricultural use or an agricultural practice may not be found to be a nuisance if all of the following apply:

1. The agricultural use or agricultural practice alleged to be a nuisance is conducted on, or on a public right-of-way adjacent to, land that was in agricultural use without substantial interruption before the plaintiff began the use of property that the plaintiff alleges was interfered with by the agricultural use or agricultural practice.

2. The agricultural use or agricultural practice does not present a substantial threat to public health or safety.

(am) Paragraph (a) applies without regard to whether a change in agricultural use or agricultural practice is alleged to have contributed to the nuisance.

(b) In an action in which an agricultural use or an agricultural practice is found to be a nuisance, the following conditions apply:

1. The relief granted may not substantially restrict or regulate the agricultural use or agricultural practice, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

2. If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court shall do all of the following:

a. Request public agencies having expertise in agricultural matters to furnish the court with suggestions for practices suitable to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance.

b. Provide the defendant with a reasonable time to take the action directed in the court’s order. The time allowed for the defendant to take the action may not be less than one year after the date of the order unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

3. If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court may not order the defendant to take any action that substantially and adversely affects the economic viability of the agricultural use, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

(c) 1. Subject to subd. 2., if a court requests the department of agriculture, trade and consumer protection or the department of natural resources for suggestions under par. (b) 2. a., the department of agriculture, trade and consumer protection or the department of natural resources shall advise the court concerning the relevant provisions of the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3).

2. If the agricultural use or agricultural practice alleged to be a nuisance was begun before October 14, 1997, a department may advise the court under subd. 1. only if the department determines

that cost-sharing is available to the defendant under s. 92.14, 281.16 (5) or 281.65 or from any other source.

(4) COSTS. (a) In this subsection, “litigation expenses” means the sum of the costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees necessary to prepare for or participate in an action in which an agricultural use or agricultural practice is alleged to be a nuisance.

(b) Notwithstanding s. 814.04 (1) and (2), the court shall award litigation expenses to the defendant in any action in which an agricultural use or agricultural practice is alleged to be a nuisance if the agricultural use or agricultural practice is not found to be a nuisance.

History: 1981 c. 123; 1995 a. 149; 1997 a. 27.

See note to 823.02, citing 1983 WLR 95.

**823.085 Actions against owners or operators of solid waste facilities.** (1) In this section, “solid waste facility” has the meaning given in s. 289.01 (35).

(2) In any action finding a solid waste facility or the operation of a solid waste facility to be a public or private nuisance, if the solid waste facility was licensed under s. 289.31 (1) and was operated in substantial compliance with the license, the plan of operation for the solid waste facility approved by the department of natural resources and the rules promulgated under s. 289.05 (1) that apply to the facility, then all of the following apply:

(a) Notwithstanding s. 823.03, the court may not order closure of the solid waste facility or substantial restriction in the operation of the solid waste facility unless the court determines that the continued operation of the solid waste facility is a threat to public health and safety.

(b) The department of natural resources shall comply with a request by the court to provide suggestions for practices to reduce the offensive aspects of the nuisance.

(c) The amount recovered by any person for damage to real property may not exceed the value of the real property as of the date that the solid waste facility began operation increased by 8% per year.

(d) Punitive damages may not be awarded.

History: 1991 a. 269; 1995 a. 227.

**823.09 Bawdyhouses declared nuisances.** Whoever shall erect, establish, continue, maintain, use, occupy or lease any building or part of building, erection or place to be used for the purpose of lewdness, assignation or prostitution, or permit the same to be used, in the state of Wisconsin, shall be guilty of a nuisance and the building, erection, or place, in or upon which such lewdness, assignation or prostitution is conducted, permitted, carried on, continued or exists, and the furniture, fixtures, musical instruments and contents used therewith for the same purpose are declared a nuisance, and shall be enjoined and abated.

History: Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.09.

See note to 823.10, citing *State v. Panno*, 151 W (2d) 819, 447 NW (2d) 74 (Ct. App. 1989).

Read in conjunction with s. 823.11, ss. 823.09 and 823.10 due not violate due process because they provide the opportunity to challenge prima facie evidence that a defendant knowingly permitted prostitution to occur on his property, and also allow the collateral challenge of the underlying prostitution convictions. The statutes also do not violate constitutional rights to freedom of association, the protection against government establishment of religion and equal protection. *State v. Schultz*, 218 W (2d) 798, 582 NW (2d) 113 (Ct. App. 1998).

**823.10 Disorderly house, action for abatement.** If a nuisance, as defined in s. 823.09, exists the district attorney or any citizen of the county may maintain an action in the circuit court in the name of the state to abate the nuisance and to perpetually enjoin every person guilty thereof from continuing, maintaining or permitting the nuisance. All temporary injunctions issued in the actions begun by district attorneys shall be issued without requiring the undertaking specified in s. 813.06, and in actions instituted by citizens it shall be discretionary with the court or presiding judge to issue them without the undertaking. The conviction

tion of any person, of the offense of lewdness, assignation or prostitution committed in the building or part of a building, erection or place shall be sufficient proof of the existence of a nuisance in the building or part of a building, erection or place, in an action for abatement commenced within 60 days after the conviction.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762, 782 (1975); Stats. 1975 s. 823.10; 1977 c. 449.

Fourth degree sexual assault under 940.225 (3m) constitutes offense of lewdness and supports finding of nuisance. *State v. Panno*, 151 W (2d) 819, 447 NW (2d) 74 (Ct. App. 1989).

Read in conjunction with s. 823.11, ss. 823.09 and 823.10 due not violate due process because they provide the opportunity to challenge prima facie evidence that a defendant knowingly permitted prostitution to occur on his property, and also allow the collateral challenge of the underlying prostitution convictions. The statutes also do not violate constitutional rights to freedom of association, the protection against government establishment of religion and equal protection. *State v. Schultz*, 218 W (2d) 798, 582 NW (2d) 113 (Ct. App. 1998).

**823.11 Evidence; dismissal of action; costs.** In actions begun under s. 823.10 the existence of any nuisance defined by s. 823.09 shall constitute prima facie evidence that the owner of the premises affected has permitted the same to be used as a nuisance; and evidence of the general reputation of the place shall be admissible to prove the existence of such nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and the complainant's attorney, setting forth the reasons why the action should be dismissed, and the dismissal shall be approved by the district attorney of the county in writing or in open court. If the court is of the opinion that the action ought not to be dismissed it may direct the district attorney of the county to prosecute said action to judgment. If the action is brought by a citizen, and the court finds that there was no reasonable ground or cause for said action the costs shall be taxed to such citizen.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762, 782 (1975); Stats. 1975 s. 823.11; 1993 a. 486.

Read in conjunction with s. 823.11, ss. 823.09 and 823.10 due not violate due process because they provide the opportunity to challenge prima facie evidence that a defendant knowingly permitted prostitution to occur on his property, and also allow the collateral challenge of the underlying prostitution convictions. The statutes also do not violate constitutional rights to freedom of association, the protection against government establishment of religion and equal protection. *State v. Schultz*, 218 W (2d) 798, 582 NW (2d) 113 (Ct. App. 1998).

**823.113 Drug or criminal gang house a public nuisance. (1)** Any building or structure that is used to facilitate the delivery, distribution or manufacture, as defined in s. 961.01 (6), (9) and (13) respectively, of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), and any building or structure where those acts take place, is a public nuisance and may be proceeded against under this section.

**(1m)** (a) In this subsection, "criminal gang" has the meaning given in s. 939.22 (9).

(b) Any building or structure that is used as a meeting place of a criminal gang or that is used to facilitate the activities of a criminal gang, is a public nuisance and may be proceeded against under this section.

**(2)** If a nuisance exists, the city, town or village where the property is located may maintain an action in the circuit court to abate the nuisance and to perpetually enjoin every person guilty of creating or maintaining the nuisance, the owner, lessee or tenant of the building or structure where the nuisance exists and the owner of the land upon which the building or structure is located, from continuing, maintaining or permitting the nuisance.

**(3)** If the existence of the nuisance is shown in the action to the satisfaction of the court, either by verified complaint or affidavit, the court shall issue a temporary injunction to abate and prevent the continuance or recurrence of the nuisance, including the issuance of an order requiring the closure of the property. Any temporary injunction issued in an action begun under this subsection shall be issued without requiring the undertaking specified in s. 813.06.

**(4)** In ruling upon a request for closure, whether for a defined or undefined duration, the court shall consider all of the following factors:

(a) The extent and duration of the nuisance at the time of the request.

(b) Prior efforts by the defendant to comply with previous court orders to abate the nuisance.

(c) The nature and extent of any effect that the nuisance has upon other persons, such as residents or businesses.

(d) The effect of granting the request upon any resident or occupant of the premises who is not named in the action, including the availability of alternative housing or relocation assistance, the pendency of any action to evict a resident or occupant and any evidence of participation by a resident or occupant in the nuisance activity.

**History:** 1989 a. 122; 1993 a. 98; 1995 a. 448.

An order under this section for closure and sale of an apartment house did not violate the constitutional protection against excessive fines. *City of Milwaukee v. Arrieh*, 211 W (2d) 762, 565 NW (2d) 291 (Ct. App. 1997).

**823.114 Judgment and order of sale of property. (1)** If the existence of the nuisance is established in an action under s. 823.113, an order of abatement shall be entered as part of the judgment in the case. In that order, the court shall do all of the following:

(a) Direct the removal from the building or structure of all furniture, equipment and other personal property used in the nuisance.

(b) Order the sale of the personal property.

(c) Order the closure of the building or structure for any purpose.

(d) Order the closure of the building or structure until all building code violations are corrected and a new certificate of occupancy is issued if required by the city, town or village within which the property is located and the building or structure is released under s. 823.15 or sold under s. 823.115.

(e) Order the sale of the building or structure and the land upon which it is located or, if the requirements under s. 66.05 (1m) (b) are met, order that the building or structure be razed, the land sold and the expense of the razing collected under s. 823.06.

**(2)** Any person breaking and entering or using a building or structure ordered closed under sub. (1) shall be punished for contempt under s. 823.12.

**History:** 1989 a. 122; 1993 a. 213.

**823.115 Sale of property and use of proceeds. (1)** If personal and real property are ordered sold under s. 823.114, and the real property is not released to the owner under s. 823.15, the plaintiff in the action under s. 823.113 shall sell the property at the highest available price. The city, town or village may sell the property at either a public or private sale. The proceeds of the sale shall be applied to the payment of the costs of the action and abatement and any liens on the property, and the balance, if any, paid as provided in sub. (2). The plaintiff may file a notice of the pendency of the action as in actions affecting the title to real estate and if the owner of the building or structure, or the owner of the land upon which the building or structure is located, is found guilty of the nuisance, the judgment for costs of the action not paid out of the proceeds of the sale of the property shall constitute a lien on the real estate prior to any other lien created after the filing of the lis pendens, except a lien under s. 292.31 (8) (i) or 292.81.

**(2)** Any balance remaining from the proceeds of the sale of property under sub. (1) shall be paid in equal shares to the following agencies or officials for the purposes listed:

(a) The law enforcement agency of the city, town or village that brought the action, to be used for gang-related and drug-related law enforcement activities.

(b) The treasurer of the city, town or village that brought the action, to be placed in a fund that is used to provide grants to organizations for gang abatement and drug and alcohol treatment programs for residents of the city, town or village that brought the action.

(c) The treasurer of the city, town or village that brought the action, to be placed in a fund that is used to provide grants to organizations for housing rehabilitation, neighborhood revitalization and neighborhood crime prevention activities in the city, town or village that brought the action.

**History:** 1989 a. 122; 1993 a. 98, 453; 1995 a. 227; 1997 a. 27.

**823.12 Punishment for violation of injunction.** A party found guilty of contempt for the violation of any injunction granted under ss. 823.09 to 823.15 shall be punished by a fine of not less than \$200 nor more than \$1,000 or by imprisonment in the county jail not less than 3 nor more than 6 months or both.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975), 782; Stats. 1975 s. 823.12.

**823.13 Judgment and execution; sale of fixtures.** If the existence of the nuisance be established in an action under s. 823.09, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed the person shall be punished as for contempt, as provided in s. 823.12.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762, 782 (1975); Stats. 1975 s. 823.13; 1993 a. 486.

**823.14 Application of proceeds of sale; lis pendens.** The proceeds of the sale of such personal property, shall be applied in the payment of the costs of the action and abatement and the balance, if any, shall be paid to the defendant. The plaintiff may file a notice of the pendency of the action as in actions affecting the title to real estate; and if the owner of the premises affected be adjudged guilty of the nuisance, the judgment for costs shall constitute a lien thereon prior to any other lien created after the filing of such lis pendens.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.14.

**823.15 Undertaking to release building or structure.** The owner of any building or structure, or the owner of the land upon which the building or structure is located, affected by an action under s. 823.10 or 823.113 may appear at any time after the commencement of the action and file an undertaking in a sum and with the sureties required by the court to the effect that he or she will immediately abate the alleged nuisance, if it exists, and prevent the same from being reestablished in the building or structure, and will pay all costs that may be awarded against him or her in the action. Upon receipt of the undertaking, the court may dismiss the action as to the building or structure and revoke any order

previously made closing the building or structure; but that dismissal and revocation shall not release the property from any judgment, lien, penalty, or liability that the property is subject to by law. The court has discretion in accepting any undertaking, the sum, supervision, satisfaction, and all other conditions of the undertaking, but the period that the undertaking shall run may not be less than one year.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762, 782 (1975); Stats. 1975 s. 823.15; 1989 a. 122.

**823.16 Remedy of lessor of place of prostitution.** If the lessee of a place has been convicted of keeping that place as a place of prostitution or if such place has been adjudged a nuisance under this chapter, the lease by which such place is held is void and the lessor shall have the same remedies for regaining possession of the premises as the lessor would have against a tenant holding over the tenant's term.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.16; 1993 a. 486.

**823.20 Gambling place a public nuisance. (1)** Any gambling place, as defined in s. 945.01 (4) (a), is a public nuisance and may be proceeded against under this chapter.

(2) Any citizen of the county in which such nuisance exists may bring an action, without showing special damages or injury, to enjoin or abate the nuisance. The court after 3 days' notice to the defendants may allow a temporary injunction without bond. The action shall be dismissed only if the court is satisfied that it should be dismissed on its merits. If application for dismissal is made, the court may continue the action and by order require the attorney general to prosecute it.

(3) If the lessee of the place has been convicted of the crime of commercial gambling because of having operated that place as a gambling place or if such place has been adjudged a nuisance under this chapter, the lease by which such place is held is void and the lessor shall have the same remedies for regaining possession of the premises as the lessor would have against a tenant holding over the tenant's term.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.20; 1993 a. 486; 1995 a. 11.

**823.21 Dilapidated buildings declared nuisances.** Any building which, under s. 66.05 (1m), has been declared so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or has been determined to be unreasonable to repair under s. 66.05 (1m) is a public nuisance and may be proceeded against under this chapter.

**History:** Sup. Ct. Order, 67 W (2d) 585, 762 (1975); Stats. 1975 s. 823.21; 1993 a. 213.

**823.215 Dilapidated wharves and piers in navigable waters declared nuisances.** Any wharf or pier in navigable waters which is declared so old, dilapidated or in need of repair that it is dangerous, unsafe or unfit for use under s. 66.0495 (1) (b) or repair is determined unreasonable under that section is a public nuisance and may be proceeded against under this chapter.

**History:** 1981 c. 252.